

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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*Attorneys for NP New Castle, LLC*

In re:

BED BATH & BEYOND INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-13359 (VFP)

Honorable Vincent F. Papalia

**OBJECTION OF NP NEW CASTLE, LLC TO NOTICE TO CONTRACT PARTIES TO  
POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

NP New Castle, LLC ("Landlord"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Notice To Contract Parties To Potentially Assumed Executory Contracts And Unexpired Leases* [Docket No. 714] (the "Cure Notice")<sup>2</sup> filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), and in support thereof, respectfully states as follows:

<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Cure Notice.

## **BACKGROUND**

### **A. The Lease Agreement**

1. Landlord, as lessor, and Debtor, Bed Bath & Beyond Inc. (“BBB”), as lessee, are parties to that certain Industrial Lease Agreement dated April 23, 2021 (as amended by that certain First Amendment to Industrial Lease dated May 31, 2022, and as may be further amended, supplemented or otherwise modified, the “Lease Agreement”).

2. BBB is currently in default of its obligations owing under the Lease Agreement as a result of BBB’s failure to pay Landlord rent and other charges due and owing to Landlord.

### **B. The Bankruptcy Case**

3. On April 23, 2023, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

4. On April 25, 2023, the Court entered the *Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets and (D) Granting Related Relief* [Docket No. 92] (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures and the Assumption and Assignment Procedures.

5. Pursuant to the Bidding Procedures Order, on June 13, 2023, the Debtors filed the Cure Notice.

6. The Debtors listed the Lease Agreement in the Cure Notice and assert that its associated Cure Payment is \$0.00. *See* Cure Notice at Item No. 1326.

### **OBJECTION**

7. While Landlord reserves and preserves all rights with respect to the potential assumption and assignment of the Lease Agreement, Landlord objects to the proposed Cure Payment for the Lease Agreement listed in the Cure Notice.

8. According to Landlord's books and records, the Cure Payment for the Lease Agreement as of June 5, 2023 is **\$388,328.04** (the "Actual Cure Amount"). Below is an itemization of the Actual Cure Amount as of June 5, 2023 .

<b>Invoice Date</b>	<b>Description</b>	<b>Amount Due</b>
N/A	Balance Adjustment	\$254.46
2/1/23	Management Fees	\$7,888.83
4/20/23	Late Fees	\$23,086.63
4/20/23	Late Fees	\$23,086.63
4/20/23	Late Fees	\$315.55
4/24/23	2022 Common Area Maintenance Reconciliation	\$332,144.94
4/28/23	Attorneys' Fees	\$1,122.00
5/5/23	Attorneys' Fees	\$429.00
<b>TOTAL:</b>		<b>\$388,328.04</b>

9. Section 365(b)(1) of the Bankruptcy Code provides that a debtor may not assume an unexpired lease or executory contract on which there has been a default unless it: (a) cures the default or provides adequate assurance that the default will be promptly cured; (b) compensates or provides adequate assurance that any pecuniary loss of the counterparty resulting from the default will be promptly compensated; and (c) provides adequate assurance of future performance under the contract. 11 U.S.C. § 365(b)(1); *see also Kimmelman v. Port Auth. of N.Y. & N.J. (In re Kiwi Int'l Air Lines, Inc.)*, 344 F.3d 311, 317-18 (3d Cir. 2003) ("In order to assume [an executory contract or unexpired lease], the debtor in possession must cure defaults and provide assurance of future performance."); *In re Bruno*, No. 06-21423, 2008 Bankr. LEXIS 910, at \*8 (Bankr. D.N.J.

Mar. 27, 2008) (11 U.S.C. § 365(b)(1)(a) “does not permit an unexpired lease to be assumed unless, at the time of assumption, the debtor cures the monetary default(s) thereunder...”).

10. Landlord therefore objects to the stated Cure Payment of the Lease Agreement and asserts that, in order for BBB to assume and assign the Lease Agreement, the Debtors must, *inter alia*, pay the Actual Cure Amount plus any obligations incurred thereunder through the date of assumption.

#### **RESERVATION OF RIGHTS**

11. Landlord expressly reserves the right to make such other and further objections as may be appropriate or necessary with respect to the Sale Transaction and the Cure Notice, including but not limited to, any additional objections regarding the prospective assumption and assignment of the Lease Agreement and adequate assurance of future performance under Section 365(b)(1) of the Bankruptcy Code.

**WHEREFORE**, to the extent the Debtors seek to assume and assign the Lease Agreement, Landlord respectfully requests that the Court deny the Debtors' stated Cure Payment for the Lease Agreement and order that the Cure Payment for the Lease Agreement be established as **\$388,328.04** as of June 5, 2023 is, plus any and all obligations incurred under the Lease Agreement on or after June 5, 2023.

Dated: June 22, 2022

**DUANE MORRIS LLP**

*/s/ Drew S. McGehrin*

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